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**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

| | | |
|-----------------------------|---|-----------------------|
| IN RE: |) | Chapter 11 |
| |) | |
| CIRCUIT CITY STORES, et al. |) | Case No. 08-35653-KRH |
| |) | Jointly Administered |
| Debtor |) | |

**OBJECTION OF HAMILTON CHASE-SANTA MARIA LLC
TO CURE AMOUNT FOR LEASE FOR STORE NO. 1629**

Hamilton Chase-Santa Maria LLC (“Hamilton Chase”) hereby files its objection to the “Cure Amount” listed for the lease on store number 1629 located in Santa Maria, California on Exhibit B to the motion (“Motion”) of Circuit City Stores, Inc., et al. (collectively, “Debtors”) for orders under sections 105, 363, and 365 of Title 11 of the United States Code (the “Bankruptcy Code”): (i) approving bidding and auction procedures for sale of unexpired nonresidential leases for closing stores; (ii) setting sale hearing date; and (iii) authorizing and approving (a) sale of certain nonresidential real property leases free and clear of liens, claims,

and encumbrances, (b) assumption and assignment of certain unexpired nonresidential property leases, and (c) lease rejection procedures. [Docket No. 413]. The objection is made and based upon the declaration of Justin Dean (“Dean Decl.”) attached hereto as Exhibit 1 and the following:

A. The Lease for Store 1629 in Santa Maria

1. Hamilton Chase, as successor-in-interest, is the lessor of the Circuit City store identified by the Debtors as store number 1629, located at 1535 S. Bradley Rd., Santa Maria, California under that certain lease dated November 7, 1995, between Circuit City Stores, Inc. and Wolverine Equities Company 95B L.P., a copy of which is attached as Exhibit A to the Dean Decl. (the “Lease”). Circuit City Stores, Inc. assigned its interest in the Lease to Circuit City Stores West Coast, Inc. on November 7, 1995. Hamilton Chase acquired its interest in the Lease on November 21, 2007.

2. The Lease sets forth several obligations of the Debtors. Under Lease Section 4(a), the Debtors are obligated to pay monthly “Basic Rent” on the last day of the month for the preceding month. Currently, Basic Rent is \$27,625 per month. In addition to Basic Rent, Lease Sections 4(c) and 5(a) require the Debtors to pay as “Additional Rent” all other amounts or discharge all other obligations assumed or agreed to by the Debtors under the Lease. Additional Rent includes operating expenses, “Taxes,” and insurance costs. Under Lease Section 7(a), the Debtors are obligated to pay and discharge “before interest or penalties are due thereon,” all “Taxes,” which includes real property taxes on the land where the leased premises are located. If the Debtors fail to pay Basic Rent or Additional Rent when due, Lease Sections 4(b) and (c) provide that interest accrues from the date the payment is due until payment is made at the “Default Rate,” which is equal to 2% above the “Prime Rate” (as defined in the Lease). In addition, Lease Section 9 requires the Debtors to maintain and repair the leased premises and

Lease Section 43 provides that the prevailing party in a dispute is entitled to payment of its reasonable and actual attorneys' fees and costs.

3. To date, the Debtors last paid Basic Rent on September 30, 2008. Further, real property taxes for the period July 1, 2008 through June 30, 2009, in the amount of \$48,425.04, were assessed by the County of Santa Barbara. A true and correct copy of the assessment is attached as Exhibit B to the Dean Decl. To date, the Debtors have not indicated that they will pay the first of two equal installments of \$24,212.04 for real property taxes. Under the Lease, the Debtors are required to pay (or postmark) the first installment of \$24,212.04 by December 10, 2008, after which a 10% penalty will be assessed.

B. The Debtors' Bankruptcy Cases

4. On November 10, 2008 (the "Petition Date"), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code. The Debtors are conducting store closing sales at 154 locations, including store number 1629. The Debtors' estates have assumed the agency agreement with the liquidators who are conducting the store closing sales. Hamilton Chase understands that, under that agency agreement, the liquidators are paying the Debtors for the rent, taxes and other occupancy expenses under the leases through the store closing sales, and will pay a full week's expenses at a location for any partial week in which the sale is conducted at such location. Hamilton Chase also understands that the liquidators are required to return the closed stores in "broom clean" condition.

C. Hamilton Chase's Objection to the Debtors' Cure Amount

5. In Exhibit B to the Motion, the Debtors identified their calculation of the "Cure Amount" necessary to assume and assign the leases for the stores that are being closed, including the Lease described above. According to Exhibit B and the Motion, the Debtors calculated the amounts listed using an accrual method that accrued lease obligations up to the Petition Date (i.e.

through November 9, 2008) and exclusive of any amounts accruing from the Petition Date through the date of assignment (i.e. November 10, 2008 and afterward). For the Lease, the Debtors calculate the cure amount to be \$8,174.00, consisting of daily rent of \$908 per day for the first nine days of November 2008. Hamilton Chase disagrees and objects.

6. As an initial matter, Hamilton Chase objects to the cure amount to the extent it does not compensate Hamilton Chase for any defaults or unperformed obligations under the Lease through and including the date of assignment, regardless of whether the default or obligation is characterized as arising before or after the Petition Date. To assume and assign an unexpired lease, sections 365(b)(1)(A), (d)(3), and (f) of the Bankruptcy Code require a debtor to cure or perform any pre- or post-petition lease defaults or obligations through the date of assumption and assignment. See 11 U.S.C. § 365(b)(1)(A), (d)(3), (f) (requiring post-petition performance under unexpired leases, cure of defaults “at the time of assumption,” and adequate assurance of future performance by assignee); *see also In re Shangra-La, Inc.*, 167 F.3d 843, 848 (4th Cir. 1999) (recognizing that the landlord is entitled to the benefit of the bargain struck under the lease as a condition to assumption). The Debtors therefore must cure, pay, or perform, any obligation under the Lease through the date of assignment to the extent it has not been satisfied in full before the date of assignment.

7. Secondly, Hamilton Chase disagrees with the Debtors’ calculation of the Cure Amount, assuming it is calculated in the same manner the Debtors used for Exhibit B to the Motion (i.e., accrual of lease obligations through November 9, 2008). Hamilton Chase calculates the “Cure Amount” for known and liquidated amounts accruing under the Lease through November 9, 2008 to be \$53,424.91, consisting of the following:

| Amount | Obligation | Period |
|--------------------|---|--|
| \$27,625.00 | Basic Rent | October 2008 |
| \$8,287.47 | Basic Rent | November 1 through 9, 2008 at per-day Basic Rent of \$920.83. (\$27,625 in Basic Rent divided by 30 days) |
| \$17,512.44 | Additional Rent for Real Property Taxes | July 1, 2008 through November 9, 2008 at per-day real property taxes of \$132.67. (\$48,425.04 in annual taxes divided by 365 days) |
| \$53,424.91 | Total | |

In addition to the amounts listed above, Hamilton Chase reserves all rights to assert amounts owing under the Lease through the date of assignment that become known to Hamilton Chase and liquidated. These may include amounts for interest on unpaid Basic Rent or Additional Rent, attorneys' fees, or other charges to be reconciled, including amounts owed for the failure of the Debtors or their agents to maintain and repair the leased premises.

8. Hamilton Chase further notes that the Debtors have reserved their rights to assert that the Cure Amount on Exhibit B should be calculated using the "billing date" method. In fact, the Debtors recently argued for the use of the "billing date" method in their opposition to motions by several landlords to compel payment of post-petition lease obligations under Bankruptcy Code section 365(d)(3), which dispute has been continued to the December 22, 2008 omnibus hearing. Hamilton Chase therefore reserves all rights to object to the Debtors' calculation of the Cure Amount for the Lease under a billing date method, should the estates employ that method.

9. Hamilton Chase reserves all rights to seek or compel payment of any and all obligations under the Lease under sections 365 and 503 of the Bankruptcy Code.

CONCLUSION

Wherefore, based on the foregoing, Hamilton Chase respectfully requests that the Court require the Debtors to modify the "Cure Amount" for the Lease for store number 1629 to be in

the liquidated amount of \$53,424.91, subject to Hamilton Chase's rights to assert any and all additional amounts accruing through the date of assignment of the Lease, and further subject to its other reservations of rights set forth herein, and grant such other and further relief as may be necessary and proper.

Respectfully submitted,

/s/ Gregory D. Grant

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Counsel for Hamilton Chase-Santa Maria LLC

Dated: December 10, 2008

Certificate of Service

I certify that on this 10th day of December 2008, the foregoing was filed and served using the Court's ECF system, and was sent by U.S. mail to the persons listed on the attached service list.

/s/ Gregory D. Grant

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